

1 XAVIER BECERRA  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DANIEL J. CROSS  
Deputy Attorney General  
4 State Bar No. 203017  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9058  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 79/19-7877

14 **ESTRELLA HERNANDEZ, DBA**  
15 **EL TORO TEST ONLY**  
10565 Limonite Ave., Unit D  
16 Mira Loma, CA 91752

**ACCUSATION**

17 Mailing Address:  
5244 Manhart Circle  
18 Riverside, CA 92509

19 Automotive Repair Dealer Registration No.  
ARD 280500  
20 Smog Check Test Only Station License No. TC  
280500,

21 and

22 **JAIME SOTO**  
785 E. Sixth Street  
23 Pomona, CA 91766

24 Smog Check Inspector License No. EO  
25 638130,

26 Respondents.

1 **PARTIES**

2 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as  
3 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

4 2. On June 9, 2015, the Bureau issued Automotive Repair Dealer Registration Number  
5 ARD 280500 to Estrella Hernandez, dba El Toro Test Only (Respondent Hernandez). The  
6 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the  
7 charges brought herein and will expire on June 30, 2020, unless renewed.

8 3. On July 1, 2015, the Bureau issued Smog Check Test Only Station License Number  
9 TC 280500 to Respondent Hernandez. The Smog Check Test Only Station License was in full  
10 force and effect at all times relevant to the charges brought herein and will expire on June 30,  
11 2020, unless renewed.

12 4. On or about May 11, 2015, the Bureau of Automotive Repair issued Smog Check  
13 Inspector License Number EO 638130 to Jaime Soto (Respondent Soto). The Smog Check  
14 Inspector License was in full force and effect at all times relevant to the charges brought herein  
15 and will expire on December 31, 2020, unless renewed.

16 5. At all times relevant to the allegations of this Accusation, Respondent Soto was  
17 acting in the course and within the scope of his duties as a technician, inspector, employee, agent,  
18 or other representative of Respondent Hernandez.

19 **JURISDICTION**

20 6. This Accusation is brought before the Director of the Department of Consumer  
21 Affairs (Director) for the Bureau, under the authority of the following laws.

22 7. Business and Professions Code (Code) section 118, subdivision (b), provides that the  
23 suspension, expiration, or cancellation of a license shall not deprive the Director of jurisdiction to  
24 proceed with a disciplinary action during the period within which the license may be renewed,  
25 restored, reissued or reinstated.

26 8. Pursuant to code section 477, Code section references to the term “board” include the  
27 Bureau, and references to the term “license” includes Automobile Repair Dealer Registrations.

28 ///

1           9. Code section 9884.13 provides that the expiration of a valid registration shall not  
2 deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an  
3 automotive repair dealer or to render a decision invalidating a registration temporarily or  
4 permanently.

5           10. Code section 9884.22 provides that the Director may revoke or suspend a registration  
6 on any grounds for disciplinary action provided in the article, and proceedings shall be conducted  
7 in accordance with the Administrative Procedure Act.

8           11. Health and Safety Code section 44002 provides that the Director has all the powers  
9 and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle  
10 Inspection Program.

11           12. Health and Safety Code section 44072.4 provides that after a hearing, the Director  
12 may take disciplinary action including imposing probation upon terms and conditions the Director  
13 sets forth, license suspension, or revocation

14           13. Health and Safety Code section 44072.6 provides that (a) expiration or suspension of  
15 a license by operation of law, the Director, or a court, or (b) voluntary surrender of a license, shall  
16 not deprive the Director of jurisdiction to proceed with disciplinary action.

17           14. Health and Safety Code section 44072.7 states:

18                   All accusations against licensees shall be filed within three years after the act  
19 or omission alleged as the ground for disciplinary action, except that with respect  
20 to an accusation alleging a violation of subdivision (d) of Section 44072.2, the  
21 accusation may be filed within two years after the discovery by the bureau of the  
alleged facts constituting the fraud or misrepresentation prohibited by that section.

22           15. Health and Safety Code section 44072.8 states:

23                   When a license has been revoked or suspended following a hearing under  
24 this article, any additional license issued under this chapter in the name of the  
25 licensee may be likewise revoked or suspended by the director.

26           ///

27           ///

28           ///

**STATUTORY PROVISIONS**

16. Code section 9884.7 states:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

....

(4) Any other conduct which constitutes fraud.

....

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

....

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

17. Health and Safety Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

1 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions  
2 of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an  
3 idle mode or loaded mode are tested in accordance with procedures prescribed by  
4 the department. In determining how loaded mode and evaporative emissions  
5 testing shall be conducted, the department shall ensure that the emission reduction  
6 targets for the enhanced program are met.

7 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative  
8 system and crankcase ventilation system are tested to reduce any nonexhaust  
9 sources of volatile organic compound emissions, in accordance with procedures  
10 prescribed by the department.

11 (e) For diesel-powered vehicles, if the department determines that the  
12 inclusion of those vehicles is technologically and economically feasible, a visual  
13 inspection is made of emission control devices and the vehicle's exhaust emissions  
14 in an idle mode or loaded mode are tested in accordance with procedures  
15 prescribed by the department. The test may include testing of emissions of any or  
16 all of the pollutants specified in subdivision (c) and, upon the adoption of  
17 applicable standards, measurement of emissions of smoke or particulates, or both.

18 (f) A visual or functional check is made of emission control devices  
19 specified by the department, including the catalytic converter in those instances in  
20 which the department determines it to be necessary to meet the findings of Section  
21 44001. The visual or functional check shall be performed in accordance with  
22 procedures prescribed by the department.

23 (g) A determination as to whether the motor vehicle complies with the  
24 emission standards for that vehicle's class and model-year as prescribed by the  
25 department.

26 (h) The test procedures may authorize smog check stations to refuse the  
27 testing of a vehicle that would be unsafe to test, or that cannot physically be  
28 inspected, as specified by the department by regulation. The refusal to test a  
vehicle for those reasons shall not excuse or exempt the vehicle from compliance  
with all applicable requirements of this chapter.

18. Health and Safety Code section 44015, subdivision (b), states:

22 (b) If a vehicle meets the requirements of Section 44012, a smog check  
23 station licensed to issue certificates shall issue a certificate of compliance or a  
24 certificate of noncompliance.

25 19. Health and Safety Code section 44032 states:

26 No person shall perform, for compensation, tests or repairs of emission  
27 control devices or systems of motor vehicles required by this chapter unless the  
28 person performing the test or repair is a qualified smog check technician and the  
test or repair is performed at a licensed smog check station. Qualified technicians

1 shall perform tests of emission control devices and systems in accordance with  
2 Section 44012.

3  
4  
5  
6  
7  
8  
9  
10  
11 20. Health and Safety Code section 44035 states:

(a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

(b) The department or its representatives, including quality assurance inspectors, shall be provided access to licensed stations for the purpose of examining property, station equipment, repair orders, emissions equipment maintenance records, and any emission inspection items, as defined by the department.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 21. Health and Safety Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

22. Health and Safety Code section 44072.2 states:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, ' 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

....

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

....

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed."

1 23. Health and Safety Code section 44072.10 states:

2 (a) Notwithstanding Sections 44072 and 44072.4, the director, or the  
3 director's designee, pending a hearing conducted pursuant to subdivision (e), may  
4 temporarily suspend any smog check station or technician's license issued under  
5 this chapter, for a period not to exceed 60 days, if the department determines that  
6 the licensee's conduct would endanger the public health, safety, or welfare before  
7 the matter could be heard pursuant to subdivision (e), based upon reasonable  
8 evidence of any of the following:

9 (1) Fraud.

10 ...

11 (3) Intentional or willful violation of this chapter or any regulation, standard,  
12 or procedure of the department implementing this chapter.

13 (4) A pattern or regular practice of violating this chapter or any regulation,  
14 standard, or procedure of the department implementing this chapter.

15 ....

16 (c) The department shall revoke the license of any smog check technician or  
17 station licensee who fraudulently certifies vehicles or participates in the fraudulent  
18 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of  
19 the following:

20 ...

21 (4) Intentional or willful violation of this chapter or any regulation, standard,  
22 or procedure of the department implementing this chapter.

23 **REGULATORY PROVISIONS**

24 24. California Code of Regulations, title 16, section 3340.24(c), states:

25 (c) The bureau may suspend or revoke the license of or pursue other legal  
26 action against a licensee, if the licensee falsely or fraudulently issues or obtains a  
27 certificate of compliance or a certificate of noncompliance.

28 25. California Code of Regulations, title 16, section 3340.30, states:

A smog check technician shall comply with the following requirements at all  
times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles in accordance  
with section 44012 of the Health and Safety Code, section 44035 of the Health and  
Safety Code, and section 3340.42 of this article.

1 (b) A licensed technician shall maintain on file with the bureau a correct  
2 mailing address pursuant to section 3303.3 of Article 1 of this Chapter.

3 (c) A licensed technician shall notify the bureau in writing within two weeks  
4 of any change of employment.

5 (d) A licensed technician whose license has expired shall immediately cease  
6 to inspect, test, or repair failed vehicles.

6 26. California Code of Regulations, title 16, section 3340.35(c), states:

7 (c) A licensed station shall issue a certificate of compliance or  
8 noncompliance to the owner or operator of any vehicle that has been inspected in  
9 accordance with the procedures specified in section 3340.42 of this article and has  
10 all the required emission control equipment and devices installed and functioning  
correctly. The following conditions shall apply:

11 (1) Customers shall be charged the same price for certificates as that paid by  
12 the licensed station; and

13 (2) Sales tax shall not be assessed on the price of certificates.

14 27. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

15 No person shall enter into the emissions inspection system any vehicle  
16 identification information or emission control system identification data for any  
17 vehicle other than the one being tested. Nor shall any person knowingly enter into  
18 the emissions inspection system any false information about the vehicle being  
tested.

19 28. California Code of Regulations, title 16, section 3340.42, states:

20 Smog check inspection methods are prescribed in the Smog Check Manual,  
21 referenced by section 3340.45.

22 (a) All vehicles subject to a smog check inspection, shall receive one of the  
23 following test methods:

24 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999  
25 model-year vehicle, except diesel-powered, registered in the enhanced program  
26 areas of the state. The loaded-mode test shall measure hydrocarbon, carbon  
27 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the  
28 bureau's specifications referenced in subsection (a) of Section 3340.17 of this  
article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test  
equipment, including a chassis dynamometer, certified by the bureau.

1 On and after March 31, 2010, exhaust emissions from a vehicle subject to  
2 this inspection shall be measured and compared to the emissions standards shown  
3 in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards  
4 (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference.  
5 If the emissions standards for a specific vehicle are not included in this table then  
6 the exhaust emissions shall be compared to the emissions standards set forth in  
7 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all  
8 of its measured emissions are less than or equal to the applicable emission  
9 standards specified in the applicable table.

10 (2) A two-speed idle mode test shall be the test method used to inspect 1976  
11 - 1999 model-year vehicles, except diesel-powered, registered in all program areas  
12 of the state, except in those areas of the state where the enhanced program has  
13 been implemented. The two-speed idle mode test shall measure hydrocarbon,  
14 carbon monoxide and carbon dioxide emissions at high RPM and again at idle  
15 RPM, as contained in the bureau's specifications referenced in subsection (a) of  
16 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this  
17 inspection shall be measured and compared to the emission standards set forth in  
18 this section and as shown in TABLE III. A vehicle passes the two-speed idle  
19 mode test if all of its measured emissions are less than or equal to the applicable  
20 emissions standards specified in Table III.

21 (3) An OBD-focused test, shall be the test method used to inspect gasoline-  
22 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998  
23 model-year and newer. The OBD test failure criteria are specified in section  
24 3340.42.2.

25 (b) In addition to subsection (a), all vehicles subject to the smog check  
26 program shall receive the following:

27 (1) A visual inspection of emission control components and systems to  
28 verify the vehicle's emission control systems are properly installed.

(2) A functional inspection of emission control systems as specified in the  
Smog Check Manual, referenced by section 3340.45, which may include an OBD  
test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in  
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and  
Safety Code section 44014.7 as a means of identifying potential operational  
problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically  
incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational  
problems.

1 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter  
2 standards are as follows:

3 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon  
4 monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions  
5 standards included in the tables described in subsection (a), as applicable.

6 (2) Vehicles with emission levels exceeding the emission standards for gross  
7 polluters during an initial inspection will be considered gross polluters and the  
8 provisions pertaining to gross polluting vehicles will apply, including, but not  
9 limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

10 (3) A gross polluting vehicle shall not be passed or issued a certificate of  
11 compliance until the vehicle's emissions are reduced to or below the applicable  
12 emissions standards for the vehicle included in the tables described in subsection  
13 (a), as applicable. However, the provisions described in section 44017 of the  
14 Health and Safety Code may apply.

15 (4) This subsection applies in all program areas statewide to vehicles  
16 requiring inspection pursuant to sections 44005 and 44011 of the Health and  
17 Safety Code.

18 29. California Code of Regulations, title 16, section 3373, states:

19 No automotive repair dealer or individual in charge shall, in filling out an  
20 estimate, invoice, or work order, or record required to be maintained by section  
21 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or  
22 information which will cause any such document to be false or misleading, or  
23 where the tendency or effect thereby would be to mislead or deceive customers,  
24 prospective customers, or the public.

25 **COST RECOVERY**

26 30. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the  
27 administrative law judge to direct a licentiate found to have committed a violation or violations of  
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
included in a stipulated settlement.

///

///

///

**FACTUAL ALLEGATIONS**

1  
2           31. California’s Smog Check Program requires the owners of most motor vehicles in the  
3 State to periodically pass a smog check inspection and receive a certificate of compliance. These  
4 inspections are performed by smog check inspectors at smog check stations, both of which are  
5 licensed by the Bureau of Automotive Repair. The Smog Check Program is designed and  
6 intended to reduce air pollution by identifying and requiring the repair of polluting vehicles.

7           32. A smog check inspection of pre-2000 model-year vehicles includes three parts:  
8 tailpipe, visual, and functional. Smog check inspectors are required to perform the test in  
9 accordance with the Smog Check Program’s codes, regulations, and Smog Check Manual.  
10 Inspectors are required to enter the results of the inspection into the Emission Inspection System  
11 (EIS), which determines whether a vehicle passed the inspection based on the results of the  
12 tailpipe, visual, and functional tests. A vehicle must pass all three parts to pass the overall  
13 inspection and receive a certificate of compliance. If the vehicle passes, the inspector  
14 electronically transmits a certification of compliance to the Bureau’s vehicle information database.

15           33. The tailpipe portion of the smog inspection is at issue here. The tailpipe portion of  
16 a smog check inspection of a pre-2000 model-year vehicle registered in Enhanced Areas requires  
17 an Acceleration Simulation Mode (ASM) inspection, which an inspector performs using the EIS.<sup>1</sup>  
18 The EIS is a computer-based, five-gas analyzer that measures Hydrocarbons, Carbon Monoxide,  
19 Nitrogen Oxide, Carbon Dioxide and Oxygen. The ASM inspection entails two loaded mode  
20 sequences that test the vehicle's tailpipe emissions on a dynamometer. With the vehicle’s drive  
21 wheels on rollers, the inspector operates the vehicle at speeds of 15 miles per hour and 25 miles  
22 per hour to simulate driving conditions while the EIS samples the vehicle’s exhaust emissions.  
23 The vehicle emission samples and speed data generated throughout the ASM test are then stored  
24 in the vehicle information database.

25           34. Clean-gassing is a method by which a smog check inspector introduces a surrogate  
26 gas into the EIS during the tailpipe portion of the smog inspection. As discussed above, during a

27 \_\_\_\_\_  
28           <sup>1</sup> A two speed idle inspection is used in some circumstances but the vehicles at issue here  
were subject to the ASM test.

1 properly administered tailpipe test the EIS measures the vehicle's exhaust emissions. When an  
2 inspector clean gasses a vehicle, the EIS measures the surrogate gas or a mixture of the surrogate  
3 gas and the vehicle's exhaust. Introducing a surrogate gas in this manner alters the exhaust the  
4 EIS samples and causes it to issue a passing test result based on the fraudulent reading.

5 35. The Bureau can detect clean-gassing through analysis of the second-by-second data  
6 collected and stored in the vehicle information database. Throughout the ASM test, the EIS  
7 samples and transmits the vehicle emission and speed data on a second-by-second basis. The  
8 second-by-second data generated when a station is clean gassing often show a distinctly different  
9 pattern from the data generated during legitimate ASM smog check inspections. The second-by-  
10 second data generated during clean-gassing exhibit an abrupt drop in the level of hydrocarbons,  
11 carbon monoxide, and nitrogen oxides when the inspector introduces the surrogate gas. The levels  
12 remain low for a short period and then rise when the surrogate gas dissipates. These sharp drops  
13 and rises during periods of steady vehicle speed do not occur during legitimate ASM tests.

14 36. A Bureau representative reviewed the test data Respondents transmitted to the  
15 Bureau through the EIS and found that the second-by-second data revealed a pattern of fraudulent  
16 inspections using the clean-gassing method. The Bureau representative found that with respect to  
17 13 separate vehicles, the second-by-second data Respondents transmitted exhibited a highly  
18 irregular and unexpected pattern of gas readings consistent with clean-gassing. Specifically, in  
19 each case, the data revealed at least one sharp simultaneous drop and at least one sharp simultaneous  
20 rise in the concentrations of pollutants during the test.

21 37. Moreover, for 12 of the 13 vehicles in question, the representative located results of  
22 a prior test of the vehicle and reviewed the second-by-second data generated during that test. In  
23 each case, Respondent performed the prior test in which the vehicle failed the tailpipe portion. In  
24 each case, the data patterns from the prior test were normal and did not exhibit the simultaneous  
25 drops and rise of pollutant concentrations. In each case, Respondent retested the vehicle a few days  
26 later and it passed the tailpipe portion of the test. And in each case, during the second test, the  
27 vehicle transmitted data patterns indicating Respondent clean gassed the vehicle in order to cause  
28 it to pass. A summary of each fraudulent smog check is as follows:

1           **a. Vehicle # 1.** On April 27, 2017, Respondents tested a 1993 Honda Accord that failed  
2 the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the  
3 applicable threshold. On May 30, 2017, Respondents re-inspected the vehicle using the clean-  
4 gassing method and it passed.

5           **b. Vehicle # 2.** On May 26, 2017, Respondents tested a 1993 Toyota Pickup that failed  
6 the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the  
7 applicable threshold. On May 30, 2017, Respondents re-inspected the vehicle using the clean-  
8 gassing method and it passed.

9           **c. Vehicle # 3.** On June 3, 2017, Respondents inspected a 1995 Toyota Pickup that  
10 failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the  
11 “gross polluter” threshold. On June 9, 2017, Respondents re-inspected the vehicle using the  
12 clean-gassing method and it passed.

13           **d. Vehicle # 4.** On June 17, 2017, Respondents inspected a 1987 Toyota Supra that  
14 failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the  
15 “gross polluter” threshold. On June 24, 2017, Respondents re-inspected the vehicle using the  
16 clean-gassing method and it passed.

17           **e. Vehicle # 5.** On June 17, 2017, Respondents inspected a 1991 Honda Civic that  
18 failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the  
19 “gross polluter” threshold. On July 3, 2017, Respondents re-inspected the vehicle using the  
20 clean-gassing method and it passed.

21           **f. Vehicle # 6.** On July 17, 2017, Respondents inspected a 1999 Honda Accord that  
22 failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the  
23 “gross polluter” threshold. On July 24, 2017, Respondents re-inspected the vehicle using the  
24 clean-gassing method and it passed.

25           **g. Vehicle # 7.** On October 28, 2017, Respondents inspected a 1989 Nissan Pickup  
26 using the clean-gassing method and it passed. The second-by-second emissions data exhibited a  
27 highly irregular and unexpected pattern that can only be explained by clean-gassing.  
28







1 c. **Section 3340.41, subdivision (c)**: Respondents knowingly entered into the  
2 Emissions Inspection System false information about the vehicles listed in paragraph 37,  
3 subparagraphs a. through m. above, providing results for smog inspections that were not properly  
4 performed.

5 d. **Section 3340.42**: Respondents failed to conduct the required smog tests on the  
6 vehicles listed in paragraph 37, subparagraphs a. through m. above, in accordance with the  
7 Bureau's specifications.

8 e. **Section 3373**: Respondents withheld and inserted in the certificates of compliance  
9 issued for the vehicles listed in paragraph 37, subparagraphs a. through m. above, statements and  
10 information that caused the certificates to be false or misleading, or had the tendency or effect to  
11 mislead or deceive the public.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit)**

14 46. Complainant re-alleges and incorporates by reference the allegations set forth above  
15 in the foregoing paragraphs.

16 47. Respondent Hernandez's Smog Check Station License is subject to disciplinary  
17 action under Health and Safety Code section 44072.2, subdivision (d), and 44072.10,  
18 subdivisions (a) and (c), in that Respondents committed dishonest, fraudulent, or deceitful acts  
19 whereby another is injured by issuing smog certificates of compliance for the vehicles listed in  
20 paragraph 37, subparagraphs a. through m. above, without performing bona fide inspections of  
21 the emission control devices and systems on the vehicles, thereby depriving the People of the  
22 State of California of the protection afforded by the Motor Vehicle Inspection Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Violations of the Motor Vehicle Inspection Program)**

25 48. Complainant re-alleges and incorporates by reference the allegations set forth above  
26 in the foregoing paragraphs.

27 ///

28 ///



1 c. **Section 3340.42**: Respondent Soto failed to conduct the required smog tests on the  
2 vehicles listed in paragraph 37, subparagraphs a. through m. above, in accordance with the  
3 Bureau's specifications.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Dishonesty, Fraud or Deceit)**

6 52. Complainant re-alleges and incorporates by reference the allegations set forth above  
7 in the foregoing paragraphs.

8 53. Respondent Soto's Smog Check Inspector License is subject to disciplinary action  
9 under Health and Safety Code section 44072.2, subdivision (d), and 44072.10, subdivisions (a)  
10 and (c), in that Respondent Soto committed dishonest, fraudulent, or deceitful acts whereby  
11 another is injured by issuing smog certificates of compliance for the vehicles listed in paragraph  
12 37, subparagraphs a. through m. above, without performing bona fide inspections of the emission  
13 control devices and systems on the vehicles, thereby depriving the People of the State of  
14 California of the protection afforded by the Motor Vehicle Inspection Program.

15 **OTHER MATTERS**

16 54. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or  
17 place on probation the registration for all places of business operated in this state by Respondent  
18 Hernandez upon a finding that she has, or is, engaged in a course of repeated and willful  
19 violations of the laws and regulations pertaining to an automotive repair dealer.

20 55. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station  
21 License Number TC 280500, issued to Respondent Hernandez is revoked or suspended, any  
22 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code  
23 in Respondent Hernandez's name may also be revoked or suspended by the Director.

24 56. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
25 No. EO 638130 issued to Respondent Soto is revoked or suspended, any additional license issued  
26 under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in Respondent Soto's  
27 name may also be revoked or suspended by the Director.

28 ///

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 280500 issued to Estrella Hernandez, dba El Toro Test Only;
- 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to Estrella Hernandez;
- 3. Revoking or suspending Smog Check Test Only Station License Number TC 280500 issued to Estrella Hernandez, dba El Toro Test Only;
- 4. Revoking or suspending any other license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Estrella Hernandez;
- 5. Revoking or suspending Smog Check Inspector License Number EO 638130 issued to Jaime Soto;
- 6. Revoking or suspending any other license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Jaime Soto;
- 7. Ordering Estrella Hernandez and Jaime Soto, jointly and severally, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 8. Taking such other and further action as deemed necessary and proper.

DATED: October 2, 2019

Signature On File  
 \_\_\_\_\_  
 PATRICK DORAIS  
 Chief  
 Bureau of Automotive Repair  
 Department of Consumer Affairs  
 State of California  
*Complainant*

SD2019702437  
71994716.docx